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Honourable Chair, Excellencies, distinguished delegates, ladies, gentlemen, and all others;

I am honoured to take the floor before the Human Rights Council, for the last time in my capacity as Special Rapporteur in the field of cultural rights.

Today, I shall present my last thematic report to the Human Rights Council on copyright policy and the right to science and culture (A/HRC/28/57), and will share some observations to conclude my six-year tenure as Independent Expert and then Special Rapporteur. I will also report on the country visit I undertook in Viet Nam from 19 to 29 November 2013 (A/HRC/28/57/Add.1)

Mr. President,

In 2014, my research focused on intellectual property regimes and the enjoyment of the right to science and culture. Given the complexity of the issue, I have divided the work into two consecutive reports: the first, before you today, concentrates on the interface of copyright policy with the right to science and culture (A/HRC/28/57). The second, relating to patent policy, will be presented to the General Assembly in October 2015.

As you know, there are unresolved tensions between intellectual property laws and human rights. Approaching them through the lens of the right to science and culture offers a promising space for reconciliation, as article 15 of ICESCR simultaneously calls for the protection of the right to take part in cultural life, the right to enjoy the benefits of scientific progress and its applications, and the right to benefit from the protection of authorship. Cultural participation and the protection of authorship are both human rights principles designed to work in tandem. Striking an appropriate balance between the two goals is thus essential, even if challenging.

Copyright laws prohibit much more than literal copying. They generally also render illegal translating, publicly performing, distributing, adapting or modifying a copyrighted work without permission or licence from the copyright holder. Copyright protection is thus fundamental to the system of licensing and payment for access to creative work that drive various cultural industries. Copyright holders, who may not be the original author, usually monetize a wide variety of uses and may prevent adaptations they find objectionable. Consequently, the creative freedom of others to build upon and adapt existing cultural works may become dependent upon their ability to pay a licensing fee.

Partly in response to this concern, copyright laws incorporate exceptions and limitations, which preserve the freedom of other artists and the general public to use copyrighted works in certain ways without the copyright holder's permission. National practices on copyright exceptions and limitations vary significantly, however.

A widely shared concern stems from the tendency for copyright protection to be strengthened with little consideration to human rights issues. The tendency for trade negotiations to be conducted amid great secrecy, with substantial corporate

participation but without an equivalent participation of elected officials and other public interest voices, adds to this concern.

In my report, I advocate a human rights based approach to copyright issues, which would help focus attention on important themes that may be lost when copyright is treated primarily in terms of trade: the social function and human dimension of intellectual property, the public interests at stake, the importance of transparency and public participation in policymaking, the need to design copyright rules to genuinely benefit human authors, the importance of broad diffusion and cultural freedom, not-for-profit cultural production and innovation, and the special consideration for the impact of copyright law upon marginalised or vulnerable groups.

I would like to highlight some key points of my reports:

1) **First, intellectual property rights are not human rights.** This equation is false and misleading. In some ways, copyright policy falls short of adequately protecting authorship, in other ways it often goes too far, unnecessarily limiting cultural freedom and participation.

2) **Second, authors must be distinguished from copyright-holders.** The right to protection of authorship remains with the human author(s) whose creative vision gave expression to the work, even when the copyright interest has been sold to a corporate publisher or distributor. We should always keep in mind that copyright regimes may under-protect authors because producers/publishers/distributors and other “subsequent right-holders” typically exercise more influence over law-making than individual creators, and may have divergent and possibly opposing interests to those of the creators.

3) **Third, protection of authorship as a human right requires in some ways more and in other ways less than what is currently found in the copyright laws of most countries.** This holds true for both the moral and the material interests of authors.

In this regard, it is important to look beyond moral rights already recognized in copyright regimes to discern additional or **stronger moral interests from a human rights standpoint**, such as, in particular, the interest of artists and researchers in creative, artistic and academic freedom, freedom of expression, and personal autonomy.

Creators often need corporate rights holders: to develop innovative ways of delivering cultural works to the public, provide capital to finance high-budget cultural productions, and free artists from many of the burdens of commercializing their work. The human right to protection of authorship requires that copyright policies be carefully designed to ensure that **authors (and not only copyright holders) benefit materially.** An appropriate balance is crucial, recognizing that creators are both supported and constrained by copyright rules.

I would like to stress that **copyright laws are only one element in the protection of authorship and should be understood as part of a larger set of policies to promote the cultural sector and the right to science and culture.** Artistic livelihoods may, and should, be supported in other ways.

In this regard, some key conclusions and recommendations are as follows:

- States bear a human rights obligation to ensure that copyright regulations are designed to promote creators' ability to earn a livelihood and to protect their scientific and creative freedoms, the integrity of their work and their right to attribution.
- Given the inequality of legal expertise and bargaining power between artists/creators on the one hand, and their publishers and distributors on the other, States should protect artists from exploitation in the context of copyright licensing and royalty collection. In many contexts, legal protections that may not be waived by contract will be most appropriate. Enforceable rights of attribution and integrity, *droit de suite*, statutory licensing and reversion rights are recommended examples.
- States should further develop and promote mechanisms for protecting the moral and material interests of creators without unnecessarily limiting public access to creative works, through exceptions and limitations and the subsidy of openly licensed works.
- States are encouraged to consider policies on labour practices, social benefits, funding for education and the arts, and cultural tourism, etc., to support artistic livelihoods.

4) Fourth, **exceptions and limitations of copyright** — defining specific uses that do not require a license from the copyright holder — **should be developed** to ensure the conditions for everyone to enjoy their right to take part in cultural life by permitting legitimate educational usages, expanding spaces for non-commercial culture and making works accessible for persons with disabilities or speakers of non-dominant languages.

The main challenge, I believe, is that international copyright treaties generally treat copyright protections as mandatory, while largely treating exceptions and limitations as optional. The standard for judging whether a particular exception or limitation is permissible under international copyright law is not articulated with precision. This is why one of my recommendations is **to explore the possibility of establishing a core list of minimum required exceptions and limitations incorporating those currently recognized by most States, and/or an international fair use provision.**

5) Our world is changing, and today **open licensing** is contributing to create a “cultural commons,” in which everyone can access, share and recombine cultural works. These are particularly important for the dissemination of scholarly knowledge and are increasingly encouraged in academic institutions. Such models should be strongly supported.

Creativity is not a privilege of an elite segment of society or professional artists, but a universal right. Copyright law and policy must be designed with sensitivity to populations that have special needs or may be overlooked by the market. From the human rights perspective, copyright policies must be judged by how well they serve the interests of human authors, as well as the public's interest in cultural participation.

Mr President,

I will turn now to my visit to Viet Nam.

Viet Nam has made remarkable progress towards achieving the Millennium Development Goals and realizing a range of economic, social and cultural rights. Considerable efforts are under way to enlarge access to education and culture, including in remote regions. The new 2014 Constitution includes rights of significant importance in the field of culture, and I hope that provisions on possible limitations to such rights will be interpreted in accordance with international standards.

The Government and civil society appear to be engaged in a process that is redefining the contours of the space available for a diversity of voices on a number of issues.

In the field of history teaching, in particular, I encourage the Government to open spaces to foster critical thinking, analytic learning and debate, and to focus on the teaching of history understood as an academic discipline. Concerted efforts should be made to ensure that the various histories of minority groups are included. I was pleased, however, to note achievements in the area of minority languages education.

Space for the enjoyment of artistic freedoms has grown in Viet Nam over the last decades. However, freedom of artistic expression is still limited by multiple regulations and I express my concern about the system of prior and post censorship that is effectively still in place. My report formulates many recommendations to help the Government ensure that national laws comply with international human rights standards. Programmes supporting artists and enhancing access to the arts are welcome, but steps should be adopted to ensure these are not used as a tool for controlling the content of artistic expression. I also recommend putting an end to the surveillance and harassment of artists and academics.

There is an increased focus on Viet Nam's rich cultural heritage as a resource for development and poverty reduction. Some communities, however, have seen their ways of life and culture completely disrupted by development programmes. More generally, land grabbing for commercial usage and its impact on people's livelihoods and cultural life are major issues needing attention.

Like all countries eager to develop their tourism industry, Viet Nam is confronted with important challenges in ensuring that no serious harm is done to the environment and cultural heritage. In my report, I stress that measures are needed to ensure that the people whose cultural heritage is used to promote tourism are empowered to manage such activities to their best advantage.

More generally, a major challenge for the Government is to depart from its top-down approach in the field of culture, too frequently used to steer individual and collective behaviours in directions considered compatible with government policies and objectives. I am concerned about the negative impact of this approach on the right of everyone to participate in cultural life as they choose, conduct their own cultural practices, and freely develop their cultural heritage.

I wish to warmly thank the Government of Viet Nam for their invitation and cooperation, and I encourage them to continue inviting special procedures and to allow people, in particular civil society actors, to meet mandate holders freely.

Mr. President,

Let me mention that in November 2014, I also visited Botswana. The report on that visit will be presented at the 31th session of the Council in March 2016.

Mr. President,

The work on intellectual property regimes in conjunction with the other studies and reports I have submitted, as well as the eight country visits I have undertaken over my six-year mandate, allows me to complete a first round of exploration of the content of Article 15 of ICESCR.

In my various reports, I have addressed issues related to the right of everyone to participate in cultural life, to access and enjoy cultural heritage, to enjoy the benefits of scientific progress and its applications, to benefit from the protection of authorship, and to the indispensable freedom of artistic expression and creativity.

These reports, I hope, demonstrate how relevant cultural rights are for addressing important issues and challenges, such as history teaching and memorialization processes, the role of artists in our societies, or the impact of advertising and marketing practices on human rights. I am particularly glad that my conclusions and recommendations translated into new language in some specific resolutions of this Council. I think in particular of resolution 27/3 extending the mandate of the Special Rapporteur on truth, justice, reparations and guarantees of non-recurrence referring to memorialization initiatives and processes, and of resolution 27/31 on civil society space, emphasizing important role of artistic expression and creativity in the development of society.

I am pleased that a number of States and other stakeholders have taken actions on my recommendations and I hope they will continue their efforts to advance cultural rights, understood as the rights for each person, individually and in community with others, as well as groups of people, to develop and express their humanity, their world view and the meanings they assign to their existence and to development through, inter alia, values, beliefs, convictions, languages, knowledge and the arts, institutions and ways of life. Cultural rights protect access to cultural heritage and resources that allow self-identification and development processes to take place.

As I have reiterated in many discussions with Governmental actors and other stakeholders, the mandate of the Special Rapporteur in the field of cultural rights is not about protecting culture and cultural heritage *per se*, but about promoting the conditions that allow everyone without discrimination to access, participate in and contribute to cultural life in a continuously developing manner.

Because culture is a living, dynamic and constantly evolving process, it must not be seen as a series of isolated manifestations or hermetic compartments, but as an interactive process whereby individuals and communities, while preserving their specificities and purposes, give expression to the culture of humanity.¹

All my thematic reports are based on these principles, and I will be happy to take more time at the end of the interactive dialogue to deliver concluding observations.

I thank you very much.

¹ General Comment 21.